

use, and, since it makes up 25 percent of the remainder of the building, the building is used 75 percent for offices. Thus the building qualifies as an office building and its acquisition is therefore exempt under § 802.2(d).

9. “A” intends to acquire three shopping centers from “B” for a total of \$180 million. The anchor stores in two of the shopping centers are department stores, the businesses of which “A” is buying from “B” as part of the overall transaction. The acquisition of the shopping centers is an acquisition of retail rental space that is exempt under § 802.2(h). However, “A’s” acquisition of the department store businesses, including the portion of the shopping centers that the two department stores being purchased occupy, are separately subject to the notification requirements. If the value of these assets exceeds \$50 million, “A” must comply with the requirements of the act for this part of the transaction.

10. “A” wishes to purchase from “B” a parcel of land for \$67 million. The parcel contains a race track and a golf course. The golf course qualifies as recreational land pursuant to § 802.2(f), but the race track is not included in the exemption. Therefore, if the value of the race track is more than \$50 million, “A” will have to file notification for the purchase of the race track.

11. “A” intends to purchase a poultry farm from “B.” The acquisition of the poultry farm is a transfer of agricultural property that is exempt pursuant to § 802.2(g). If, however, “B” has a poultry slaughtering and processing facility on his farm that is included in the acquisition, “A’s” acquisition of the farm is not exempt as an acquisition of agricultural property because agricultural property does not include property or assets adjacent to or used in conjunction with a processing facility that is included in an acquisition.

12. “A” proposes to purchase the prescription drug wholesale distribution business of “B” for \$80 million. The business includes six regional warehouses used for “B’s” national wholesale drug distribution business. Since “A” is acquiring the warehouses in connection with the acquisition of “B’s” prescription drug wholesale distribution business, the acquisition of the warehouses is not exempt.

[61 FR 13686, Mar. 28, 1996, as amended at 66 FR 8692, Feb. 1, 2001; 66 FR 23565, May 9, 2001; 67 FR 11903, Mar. 18, 2002]

### § 802.3 Acquisitions of carbon-based mineral reserves.

(a) An acquisition of reserves of oil, natural gas, shale or tar sands, or rights to reserves of oil, natural gas, shale or tar sands together with associated exploration or production assets

shall be exempt from the requirements of the act if the value of the reserves, the rights and the associated exploration or production assets to be held as a result of the acquisition does not exceed \$500 million. In an acquisition that includes reserves of oil, natural gas, shale or tar sands, or rights to reserves of oil, natural gas, shale or tar sands and associated exploration or production assets, the transfer of any other assets shall be subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(b) An acquisition of reserves of coal, or rights to reserves of coal and associated exploration or production assets, shall be exempt from the requirements of the act if the value of the reserves, the rights and the associated exploration or production assets to be held as a result of the acquisition does not exceed \$200 million. In an acquisition that includes reserves of coal, rights to reserves of coal and associated exploration or production assets, the transfer of any other assets shall be subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(c) Associated exploration or production assets means equipment, machinery, fixtures and other assets that are integral and exclusive to current or future exploration or production activities associated with the carbon-based mineral reserves that are being acquired. Associated exploration or production assets do not include the following:

(1) Any pipeline and pipeline system or processing facility which transports or processes oil and gas after it passes through the meters of a producing field located within reserves that are being acquired; and

(2) Any pipeline or pipeline system that receives gas directly from gas wells for transportation to a natural gas processing facility or other destination.

*Examples:* 1. “A” proposes to purchase from “B” for \$550 million gas reserves that are not yet in production and have not generated any income. “A” will also acquire from “B” for \$280 million producing oil reserves and associated assets such as wells, compressors, pumps and other equipment. The acquisition of the gas reserves is exempt as a transfer of

## § 802.4

## 16 CFR Ch. I (1–1–03 Edition)

unproductive property under § 802.2(c). The acquisition of the oil reserves and associated assets is exempt pursuant to § 802.3(a), since the value of the reserves and associated assets does not exceed the \$500 million limitation.

2. “A,” an oil company, proposes to acquire for \$180 million oil reserves currently in production along with field pipelines and treating and metering facilities which serve such reserves exclusively. The acquisition of the reserves and the associated assets are exempt. “A” will also acquire from “B” for \$51 million a natural gas processing plant and its associated gathering pipeline system. This acquisition is not exempt since § 802.3(c) excludes these assets from the exemption in § 802.3 for transfers of associated exploration or production assets.

3. “A,” an oil company, proposes to acquire a coal mine currently in operation and associated production assets for \$90 million from “B,” an oil company. “A” will also purchase from “B” producing oil reserves valued at \$100 million and an oil refinery valued at \$13 million. The acquisition of the coal mine and the oil reserves is exempt pursuant to § 802.3. Although § 802.3(c) excludes the refinery from the exemption in § 802.3 for transfers of associated exploration and production assets, “A’s” acquisition of the refinery is not subject to the notification requirements of the act because its value does not exceed \$50 million.

4. “X” proposes to acquire from “Z” coal reserves which, together with associated exploration assets, are valued at \$230 million. Since the value of the reserves and the assets exceeds the \$200 million limitation in § 802.3(b), this transaction is not exempt under § 802.3. However, if the coal reserves qualify as unproductive property under the requirements of § 802.2(c), their acquisition, along with the acquisition of their associated assets, would be exempt.

[61 FR 13688, Mar. 28, 1996, as amended at 66 FR 8692, Feb. 1, 2001]

### **§ 802.4 Acquisitions of voting securities of issuers holding certain assets the direct acquisition of which is exempt.**

(a) An acquisition of voting securities of an issuer whose assets together with those of all entities it controls consist or will consist of assets whose purchase would be exempt from the requirements of the act pursuant to Section 7A(c)(2) of the act, § 802.2, § 802.3 or § 802.5 of these rules is exempt from the reporting requirements if the acquired issuer and all entities it controls do not hold other non-exempt assets with

an aggregate fair market value of more than \$50 million.

(b) As used in paragraph (a) of this section, *issuer* means a single issuer, or two or more issuers controlled by the same acquired person.

(c) In connection with paragraph (a) of this section and § 801.15 (b), the value of the assets of an issuer whose voting securities are being acquired pursuant to this section shall be the fair market value, determined in accordance with § 801.10(c).

*Examples:* 1. “A,” a real estate investment company, proposes to purchase 100 percent of the voting securities of C, a wholly-owned subsidiary of “B,” a construction company. C’s assets are a newly constructed, never occupied hotel, including fixtures, furnishings and insurance policies. The acquisition of the hotel would be exempt under § 802.2(a) as a new facility and under § 802.2(d). Therefore, the acquisition of the voting securities of C is exempt pursuant to § 802.4(a) since C holds assets whose direct purchase would be exempt under § 802.2 and does not hold non-exempt assets exceeding \$50 million in value.

2. “A” proposes to acquire 60 percent of the voting securities of C from “B.” C’s assets consist of a portfolio of mortgages valued at \$55 million and a small manufacturing plant valued at \$26 million. The manufacturing plant is an operating unit for purposes of § 802.1(a). Since the acquisition of the mortgages would be exempt pursuant to Section 7A(c)(2) of the act and since the value of the non-exempt manufacturing plant is less than \$50 million, this acquisition is exempt under § 802.4(a).

3. “A” proposes to acquire from “B” 100 percent of the voting securities of each of three issuers, M, N and O, simultaneously. M’s assets consist of oil reserves worth \$160 million and coal reserves worth \$40 million. N has assets consisting of \$130 million of gas reserves and \$100 million of coal reserves. O’s assets are oil shale reserves worth \$140 million and a coal mine worth \$80 million. Since “A” is simultaneously acquiring the voting securities of three issuers from the same acquired person, it must aggregate the assets of the issuers to determine if any of the limitations in § 802.3 is exceeded. As a result of aggregating the assets of M, N and O, “A’s” holdings of oil and gas reserves are below the \$500 limitation for such assets in § 802.3(a). However, the aggregated holdings exceed the \$200 million limitation for coal reserves in § 802.3(b). “A’s” acquisition therefore is not exempt, and it must report the entire transaction.

[61 FR 13688, Mar. 28, 1996, as amended at 66 FR 8693, Feb. 1, 2001]